

Basin Plan definition of “waste” does not include fill soils

Non-storm Water Discharge - Any discharge to a storm water conveyance system that is not composed entirely of storm water.

Nuisance - means anything which meets all of the following requirements: (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the

Regional Board - a.k.a. California Regional Water Quality Control Board.

Region - a.k.a., San Diego Basin (9).

Sewage, Domestic - Waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works. [40 CFR 503.9(g)]

Sewage Sludge - A solid, semi-solid, or liquid residue generated during the treatment of

of human or animal origin, or from any producing, manufacturing, or processing operation of whatever nature, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.

Waste Discharge Requirements (WDRs) - The name of permits issued by the Regional Board for the discharge of waste to land. The discharge of waste to land may potentially impact ground water quality. These permits require that waste not be discharged in a manner that would cause

are established by the State and Regional Water Boards in the Water Quality Control Plans. See “water quality standards”.

Water Quality Standards - Provisions of State or federal law which consist of a designated use or uses for waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act [40 CFR section 131.3(i)]. A water quality standard under the Federal Clean Water Act is equivalent to a beneficial use designation plus a water quality objective. In California, water quality standards are promulgated by the State and Regional Water Boards in Water Quality Control Plans. Water quality standards are enforceable limits for the bodies of surface or ground waters for which they are established.

Water Quality Control Plans - There are two types of water quality control plans - Basin Plans and Statewide Plans. Regional Boards adopt Basin Plans for each region based upon surface water hydrologic basin boundaries. The Regional Basin Plans designate or describes (1) existing and potential beneficial uses of ground and

Waste - Includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or

pH - term used to refer to the hydrogen ion concentration of water. The acidity or alkalinity of water is measured by the pH factor.

Point Sources - This refers to pollutants discharged to water through any discernable, confined, and discrete conveyance.

Pollution - means an alteration of the quality of the waters of the state by wastes to a degree which unreasonably affects either of the following: (1) The waters for beneficial uses, or (2) Facilities which serve those beneficial uses. “Pollution” may include “contamination.”

Porter-Cologne Water Quality Control Act (Porter-Cologne Act) - This is also known as the California Water Code.

Quality of the Water - or “quality of the waters” refers to chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use.

Reclaimed water - or “recycled water” means water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource.

State Water Quality Protection Areas (SWQPAs) -

criteria are called water quality objectives.

of human or animal origin, or from any producing, manufacturing, or processing operation of whatever nature, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.

Triennial Review - Review of the Basin Plan which is required to be done every three years by the federal Clean Water Act [section 303(c)(1)].

Waste - Includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or

Water Quality Objectives - Numerical or narrative limits on constituents or characteristics of water designed to protect designated beneficial uses of the water. [California Water Code section 13050(h)]. California’s water quality objectives

Waters of the State - Any water, surface or underground, including saline waters within the boundaries of the State [California Water Code section 13050(e)].

Tentative CAO R9-2008-0152 should not be adopted because there was no discharge of waste to waters of the state.

- No need for WDRs
- No violation of 13260 (a)
- No violation of 13264 (a)
- No violation of the basin plan

Water Code 13260 Liability hinges on waste discharged to waters of the state

CALIFORNIA CODES

CALIFORNIA WATER CODE

Division 7. WATER QUALITY

Chapter 4. REGIONAL WATER QUALITY CONTROL

Article 4. Waste Discharge Requirements

§ 13260.

(a) All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:

- (1) Any person discharging **waste**, or proposing to discharge **waste**, within any region that could affect the quality of the waters of the state, other than into a community sewer system.
- (2) Any person who is a citizen, domiciliary, or political agency or entity of this state discharging **waste**, or proposing to discharge **waste**, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.
- (3) Any person operating, or proposing to construct, an injection well.

Water Code 13264 liability hinges on discharge of waste to waters of the state.

CALIFORNIA CODES

CALIFORNIA WATER CODE

Division 7. WATER QUALITY

Chapter 4. REGIONAL WATER QUALITY CONTROL

Article 4. Waste Discharge Requirements

§ 13264.

(a) No person shall initiate any new discharge of **waste** or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, or construct, an injection well, prior to the filing of the report required by Section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:

(1) The issuance of waste discharge requirements pursuant to Section 13263.

(2) The expiration of 140 days after compliance with Section 13260 if the waste to be discharged does not create or threaten to create a condition of pollution or nuisance and any of the following applies:

(A) The project is not subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(B) The regional board is the lead agency for purposes of the California Environmental Quality Act, a negative declaration is required, and at least 105 days have expired since the regional board assumed lead agency responsibility.

(C) The regional board is the lead agency for the purposes of the California Environmental Quality Act, and environmental impact report or written documentation prepared to meet the requirements of Section 21080.5 of the Public Resources Code is required, and at least one year has expired since the regional board assumed lead agency responsibility.

(D) The regional board is a responsible agency for purposes of the California Environmental Quality Act, and at least 90 days have expired since certification or approval of environmental documentation by the lead agency.

(3) The issuance of a waiver pursuant to Section 13269.

Basin Plan violations hinge on waste or waters of the state or United States

8. The unauthorized discharge of waste by Dr. Moritz is in violation of the following waste discharge prohibitions contained in the Water Quality Control Plan for the San Diego Basin (Basin Plan):

"1. The discharge of **waste** to **waters of the state** in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in CWC Section 13050, is prohibited;"

"3. The discharge of pollutants or dredged or fill material to **waters of the United States** except as authorized by an NPDES permit or a dredged or fill material permit (subject to the exemption described in California Water Code Section 13376) is prohibited;" and

"14. The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration **in waters of the state** or which unreasonably affect, or threaten to affect, beneficial uses of **such waters** is prohibited."

Legal issue: Consideration of economics and of the dischargers' resources – both of are required – some water-quality impairment is acceptable.

CALIFORNIA CODES

CALIFORNIA WATER CODE

Division 7. WATER QUALITY

Chapter 4. REGIONAL WATER QUALITY CONTROL

Article 3. Regional Water Quality Control Plans

§ 13241.

Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives¹ shall include, but not necessarily be limited to, all of the following:

- (a) Past, present, and probable future beneficial uses of water.
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.
- (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.
- (d) Economic considerations.**
- (e) The need for developing housing within the region.
- (f) The need to develop and use recycled water.

1. Water Code section 13050(h): ""Water quality objectives" means the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area."

California Code Of Regulations

Title 23. WATERS

Division 3. STATE WATER RESOURCES CONTROL BOARD AND REGIONAL WATER QUALITY CONTROL BOARDS

Chapter 22. STATE POLICY FOR WATER QUALITY CONTROL

§ 2907. Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code
Section 13304.

I. The procedures Regional Water Boards shall implement in making decisions as to when a person may be required to undertake an investigation related to a discharge or threat of a discharge subject to WC s 13304.

The Regional Water Board shall:

Use any relevant evidence to identify dischargers; Make reasonable efforts to identify dischargers; Require identified dischargers to investigate; and coordinate with other agencies.

II. The policies Regional Water Boards shall apply in overseeing: (a) investigations to determine the nature and horizontal and vertical extent of a discharge and (b) appropriate cleanup and abatement measures.

The Regional Water Board shall:

Require a progressive sequence: site assessment; investigation (soil and water); cleanup and abatement action development; cleanup and abatement action; and effectiveness verification; Approve concurrent action under site-specific circumstances; emergency, imminent threat, protracted investigation causing delay, and small discharges which can be cleaned up quickly; Require cleanup and abatement of all affected locations; **Name other dischargers as permitted by law**; Require adequate workplans; Review and approve workplans as practicable; Require documentation of activities; Require reliance on qualified professionals; **Prescribe consistent standards for similar circumstances**; and Identify activities that do not require supervision.

III. The procedures Regional Water Boards shall implement to ensure that discharges have the opportunity to select cost-effective methods for investigating discharges or threatened discharges and methods for cleaning up the discharges and abating the effects thereof.

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The Regional Water board shall take into account:

IV. The factors for Regional Water Boards to take into account in determining schedules for investigation and cleanup and abatement.

The Regional Water board shall take into account:

Degree of threat; Timely compliance with water quality control plans and policies; **Discharger's resources**; and Desirability of avoiding use of public funds.

**23 CCR section
2907 requires
consideration of
the dischargers'
resources**

; Discharger's resources; a

Basin Plan – Selection of enforcement action: Dischargers' resources and degree of water impairment are relevant

SELECTION OF APPROPRIATE ENFORCEMENT ACTION

The following criteria are considered by the Regional Board in selecting the appropriate enforcement action in response to an incident of noncompliance:

- Degree of water quality impairment and/or threat to the public health including the degree of toxicity of the discharge;
- Past history of discharge violations;
- Degree of cooperation or recalcitrance shown by the discharger;
- Culpability of the discharger;
- Financial resources of the discharger;
- Whether the circumstances leading to the noncompliance have been corrected;
- Whether the discharge violations are likely to continue in the future;
- Whether the discharge can be cleaned up;
- The need to take immediate cleanup action;
- Any economic benefit realized by the discharger as a result of the noncompliance; and
- Other actions as justice may require.

HAZARDOUS WASTE SOURCE REDUCTION

The Department of Toxic Substance Control (DTSC) has adopted regulations regarding hazardous waste source reduction pursuant to the Hazardous Waste Source Reduction and Management Review Act of 1989 (Article 11.9, starting with section 25244.12 of the Health and Safety Code). These regulations are contained in sections 67100.1 through sections 67100.14 of Title 22 of the CCR. These regulations require that each generator of hazardous or extremely hazardous waste within the limits set by the regulations conduct a source reduction evaluation review and plan, plan summary, hazardous waste management performance report, and report summary on or before September 1, 1991 and every four years thereafter. Every generator is required to retain a copy of the current review and plan, plan summary, report, report summary, progress report, and compliance checklist at each site, at a public library, or at a local governmental agency. The Regional Board supports these efforts of hazardous waste source reduction because any successes achieved will mean less hazardous waste which could pollute California's waters.

MUNICIPAL AND DOMESTIC WASTEWATER

Municipal wastewater in the San Diego Region consists primarily of domestic sewage and minor quantities of industrial wastes in some of the

RWQCB staff did not consider the dischargers' resources

Q How about the next bullet point? Does the regional board have any evidence as to the financial resources of Bill Moritz or Lori Moritz?

A Yes.

Q What evidence does it have?

A What you have provided. And in regards to costs of creating the plan, though I've never seen an invoice that proves that, I have – and you've also stated what you expect, or a bid you've had for what it would cost to do the actual restoration work.

Q So at this point it has no actual dollar costs for what it would cost to do the work, correct?

MR. LEON: Asked and answered.

THE WITNESS: I believe you stated in a letter or correspondence to me that it would cost 60,000.

BY MR. SIMPSON:

Q Do you have any information about the financial ability of the Moritzes?

A I do not.

Q Does anybody within the RWQCB?

A I don't know.

Deposition of RWQCB staff member Christopher Means at 105:6-106:3

California Code Of Regulations

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III. The procedures Regional Water Boards shall implement to ensure that discharges have the opportunity to select cost-effective methods for investigating discharges or threatened discharges and methods for cleaning up the discharges and abating the effects thereof.

The Regional Water Board shall:

Require attainment of cleanup and abatement goals; Require reasonable technical and monitoring reports; Require comparison of alternatives; Require consideration of standard and alternative investigative methods; Require consideration of standard and alternative cleanup and abatement methods; Require consistency with existing water quality control plans and policies; and Require best cleanup attainable if restoration of background is not feasible.

IV. The factors for Regional Water Boards to take into account in determining schedules for investigation and cleanup and abatement.

The Regional Water Board shall take into account:

- D. can be cleaned up quickly; Require cleanup and abatement of all affected locations; **Name other dischargers as**
- D. **permitted by law**; Require adequate workplans; Review and approve workplans as practicable; Require documentation of activities; Require reliance on qualified professionals; **Prescribe consistent standards for similar circumstances**; and

23 CCR section 2907
requires the naming
of other dischargers,
and *requires*
consistent standards
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